the question would not be a question of law of public interest.

It was urged upon us that in at least two previous cases (see *Public Prosecutor* v. *D'Fonseka;*[2] *Yap Ee Kong* v. *Public Prosecutor*[3]) the applicants had successfully obtained a reference, and that we should follow those cases and determine the questions referred to us. It was further said that the questions are of general importance upon which further argument and a decision of this court would be to the public advantage (see *Buckle* v. *Holmes*[4]). A short answer is that the two cases referred above involved misdirections in law and this court had no hesitation to intervene because they called for discussion of alternative views. There are no two views about the present case.

Insofar as the plea of great convenience is concerned, the House of Lords in England in *Imperial Tobacco Ltd. & Anor.* v. *A.G.*[5] has rejected the same plea in no uncertain terms. It held that where criminal proceedings have been properly instituted and are not vexatious or an abuse of the process of the court it is not a proper exercise of the court's discretion to grant to the defendant in those proceedings a declaration that the facts to be alleged did not in law prove the offence charged. For ourselves, we are of the view that for the purposes of section 66 of the Courts of Judicature Act it is not a proper exercise of our discretion to answer questions where the answers are already provided by well-settled general principles, which have to be applied to the facts of the case.

But basically, we must consistently decline to receive and answer questions which though they may be questions of law are nevertheless not questions of law of public interest, in the sense as we understand it, that a necessity arises for the determination of the questions having regard to the uncertain or conflicting state of the law on the subject: see section 66(6)(a) Courts of Judicature Act, 1964.

We would therefore follow the example of this court in *Cecil Rajah* v. *Public Prosecutor*[6] for the reasons in this judgment.

The application is dismissed.

Application dismissed.

Solicitors: *Sri Ram & Co.*

LOOT TING YEE v. TAN SRI SHEIKH HUSSAIN BIN SHEIKH MOHAMED & ORS.

[F.C. (Raja Azlan Shah Ag. L.P., Mohamed Azmi & Hashim Yeop A. Sani JJ.) November 5, 1981]

[Kuala Lumpur — Civil Appeal No. 12 of 1981]

Practice and Procedure — Contempt of court — Action for declaration pending in High Court to declare transfer of appellant invalid — Notice issued by respondents asking appellant to show cause why he should not be dismissed for non-compliance with transfer order — No risk of prejudice to fair and proper trial — R.H.C. 1980 O. 52 r. 3.

The appellant a teacher in a school in Kuala Lumpur was ordered to go on transfer to Trengganu. He refused to comply with the transfer order and he appealed to the education authority to cancel the order. His appeal was unsuccessful. He then brought an action for a declaration that the purported transfer was void and of no effect. While the suit was still pending the respondents, the Education Service Commission, sent a notice to him to show cause why he should not be dismissed from the teaching service for non-compliance with the transfer order. The appellant applied under Order 52 r. 3 of the Rules of the High Court 1980 to commit the respondents for alleged contempt of court. The application was dismissed in the High Court and the appellant appealed to the Federal Court.

Held: (1) the real question for the court in this case to decide whether there was contempt, was whether the risk of prejudice to a fair and proper trial of the pending legal proceedings was serious or real or substantial;

(2) it could not be said that the fair and proper trial of the issues in the pending action would be in any way hampered or adversely affected by the show cause notice and therefore the appeal must be dismissed.

Cases referred to:-

(1) *Attorney-General* v. *Times Newspapers Ltd.* [1973] 3 All E.R. 54.

(2) *King* v. *Parmanand* A.I.R. 1949 Pat. 222, F.B.

(3) *K.T. Chandy* v. *M.R. Zade* A.I.R. 1974 S.C. 642.

(4) *Haji Ismail bin Che Chik* v. *State Commissioner, Penang* [1975] 1 M.L.J. 271.

(5) *Vine Products Ltd. & Ors.* v. *Green & Anor.* [1966] 1 Ch. 484.

(6) *Jang Bahadur Singh* v. *Baij Nath Tiwari* A.I.R. 1969 S.C. 30.

(7) *M/s. Security and Finance* v. *Dattatraya* A.I.R. 1970 S.C. 720.

(8) *Pratap Singh* v. *Gurbaksh Singh* A.I.R. 1962 S.C. 1172.

(9) *Rizwan-Ul-Hasan* v. *State of Uttar Pradesh* A.I.R. 1953 S.C. 185, 187.

(10) *R.* v. *Ingrams & Ors., Ex parte Goldsmith* [1977] Crim. L.R. 40.

HIGH COURT.

Karpal Singh (*S.T. Lee* with him) for the applicant.

Tan Sri Datuk Abu Talib bin Othman, Attorney-General (*Lim Beng Choon,* Senior Federal Counsel with him) for the respondent.

Cur. Adv. Vult.

Wan Suleiman F.J.: The applicant had earlier obtained leave under Order 52(3) of the Rules of the High Court, 1980, and had then made the application to commit for contempt the seven respondents, the Chairman, the Deputy Chairman and members of the Education Service Commission.

The events leading to the application is set out in the affidavit and statement, both dated September 29, 1980 accompanying the notice of motion.

Applicant, Loot Ting Yee @ Lock Swee, a teacher in the Sekolah Rendah Jenis Kebangsaan (China) Naam Kheung, Batu 3½ Jalan Cheras, Kuala Lumpur was ordered on transfer to the Sekolah Rendah Jenis Kebangsaan (China) Jerteh, Trengganu. I believe it was the Jabatan Pelajaran Selangor, which turned down his appeal against transfer, and ordered him to report at the school in Jerteh, Trengganu on February 1, 1980. On April 11, 1980, his order to report to the Jerteh School was repeated, this time by an officer from the Ministry of Education.

In the meanwhile on February 14, 1980 applicant filed proceedings against the Pengarah Pelajaran Wilayah Persekutuan, the Ministry of Education, Malaysia and the Government of Malaysia in High Court, Kuala Lumpur Civil Suit No. P72 of 1980 for *inter alia* the following orders:

(1) A declaration that the purported transfer of the applicant/plaintiff to Sekolah Rendah Jenis Kebangsaan (China) Chung Hwa, Jerteh, Trengganu as directed by the first defendant and confirmed by the second defendant is inoperative and void;

(2) A declaration that the plaintiff is still legally entitled to continue employment as teacher at Sekolah Rendah Jenis Kebangsaan (China) Naam Kheung, Batu 3½, Jalan Cheras, Kuala Lumpur;

(3) An order that the plaintiff be forthwith reinstated on the terms hitherto prevailing as teacher at Sekolah Rendah Jenis Kebangsaan (China) Naam Kheung, Batu 3½, Jalan Cheras, Kuala Lumpur.

The defendants in the said suit entered conditional appearance and applied to set aside the writ on, *inter alia,* the grounds that the issue raised were not justiciable and that the indorsement on the writ showed no cause of action and that the action was otherwise misconceived and an abuse of the process of court in that it was a contrivance to obstruct the legitimate exercise by the defendants of their absolute right under the law to transfer any member of the education service. The defendants further contended no right whatsoever of applicant had been violated.

On April 8, 1980 Chang Min Tat F.J. held, *inter alia,* that the conditions of service were not justiciable but the application of a particular condition where it was actuated by malice or involves the elements of punishment or a reduction of rank was. The learned judge further held the indorsement of claim on the writ could possibly be defective but it was curable by delivery of a sufficient statement of claim which disclosed a justiciable cause of action.

On April 12, 1980 applicant filed the statement of claim in the suit which is still pending.

By letter dated June 9, 1980 (received on June 17, 1980) from the Secretary, Education Service Commission applicant was asked to show cause why he should not be dismissed from service. The charges against applicant in this letter largely refer to his declining to report for transfer to Sekolah Rendah Jenis Kebangsaan (China) Chung Hwa, Jerteh, Trengganu. The present respondents have knowledge of the pending suit, and the civil suit is referred to in the sixth charge.

In paragraph 9 of the affidavit, the applicant alleged that in so charging him, the respondents had prejudged the issues which are in fact the subject matter of the suit, which has yet to be adjudicated by the court. They had, he continued, interfered with the due course of justice, with the lawful processes of the court and so forth. In short if the applicant is right, the respondents have been guilty of more than one of the commoner examples of criminal contempt of court. (For examples of such see paragraph 7 of *Halsbury's* Laws of England 4th Edition Vol. 9 at page 7).

That the respondents knew the applicant had filed a civil suit against *inter alia* the Government of Malaysia, there can be no doubt, because of this wording of the sixth charge against applicant framed by the Education Service Commission, contained in the letter sent to him and referred to as exhibit 'LTY 2' in his affidavit.

During the argument of the application Mr. Karpal Singh applied for leave under Order 52 rule 5(3) to add another ground not specifically mentioned before. I allowed the application and on the learned Attorney intimating that he was prepared to proceed, I invited Encik Karpal Singh to address the court on the new ground only.

Learned counsel founded his argument in the letter dated June 9, 1980 LTY2 where the charges against applicant was raised by the Education Service Commission. This, he said was sent to applicant only after the order in proceedings before Chang Min Tat F.J. had been made. That was an interlocutory proceeding in the Civil Suit P.72 of 1980 previously mentioned in paragraph 5 of applicant's affidavit of September 29, 1980, and being aware of this, the move to initiate disciplinary proceedings could only be actuated by malice or bad faith.

In reply the learned Attorney argued that the commission acted as they did in the honest belief that they were exercising the powers and duties given to them by the Constitution and were not acting in league with the Ministry of Education, or the other respondents in Civil Suit P.72 of 1980.

I am unable to find anything which might reasonably be said to indicate that respondents were not acting in good faith in proceeding to institute the disciplinary measures complained of against applicant so that this application should proceed on the basis that whatever respondents have done had been done in good faith.

Mr. Karpal Singh then referred to the decision in *Attorney-General* v. *Times Newspaper Ltd.*[1] in support of his contention that the departmental charges made against the applicant was in effect the expression of opinion on specific issues to be determined by the court in a civil action, and therefore amounted to contempt. In that case a large number of writs had been issued against Distillers, a drug company which had manufactured thalidomide, a drug which had caused grave deformities in the babies of many mothers who had taken it. Whilst the suits were pending the respondents published an article which

among other things was highly critical of the sums offered by Distillers in an effort to settle with the many plaintiffs. The Attorney-General then commenced proceedings for an injunction against respondents, whose editor being minded to publish an article containing detailed evidence and arguments intended to show that Distillers had not exercised due care to see that thalidomide was safe for pregnant mothers before they put it on the market, had first sent the article to the Attorney-General.

The House of Lords held that it was a contempt of court to publish an article expressing an opinion on the merits of a specific issue which was before the court for determination in circumstances such that the article gives rise to a real risk that the fair trial of the action would be prejudiced.

I was referred to a homily by Lord Diplock at page 71 which goes as follows:

"My Lords, in any civilised society it is a function of government to maintain courts of law to which its citizens can have access for the impartial decision of disputes as to their legal rights and obligations towards one another individually and towards the state as representing society as a whole. The provision of such a system for the administration of justice by courts of law and the maintenance of public confidence in it are essential if citizens are to live together in peaceful association with one another. 'Contempt of court' is a generic term descriptive of conduct in relation to particular proceedings in a court of law which tends to undermine that system or to inhibit citizens from availing themselves of it for the settlement of their disputes. Contempt of court may thus take many forms."

At page 73, his Lordship went on to say:

"My Lords, to hold a party up to public obloquy for exercising his constitutional right to have recourse to a court of law for the ascertainment and enforcement of his legal rights and obligations is calculated to prejudice the first requirement for the due administration of justice: the unhindered access of all citizens to the established courts of law."

The Education Service Commission alleges Mr. Karpal Singh has, like the respondent newspaper, discussed the merits of the case which is the prerogative of the courts, conduct which in the words of Lord Diplock tends to undermine the system of justice or inhibits citizens from availing themselves of it and is therefore in contempt.

In the *King* v. *Parmanand*[2] a full bench of the High Court held, *inter alia,* that it is a cardinal principle that when a matter is pending for decision before a court of justice, nothing should be done which might disturb the full course of justice. Any enquiry with regard to a case which was *sub judice,* by the government, for the purpose of satisfying themselves whether the prosecution was likely to end in conviction or not so that they might instruct the Public Prosecutor to withdraw from prosecution, is bound to interfere with the even and ordinary course of justice and would constitute contempt.

It should be noted that in that case, the executive had mistakenly and I agree most improperly assumed the power to order a magistrate to conduct an enquiry and to report to government whether a criminal charge against the person would be likely to succeed, a far cry from the facts of the present application and that case is therefore of little assistance.

I am also indebted to Mr. Karpal Singh for the next authority cited, the Indian Supreme Court decision in *K.T. Chandy* v. *M.R. Zade.*[3] As I understand it, counsel referred to that authority not to dispute its validity but because by reason of the decision in *Haji Ismail bin Che Chik* v. *State Commissioner, Penang*[4] where it was held that the courts cannot grant an injunction against Government, he had assumed that it cannot grant an injunction against the Education Service Commission as well, and had therefore withdrawn an earlier application for injunction against the latter, but if there had been an injunction, he could have relied on *Chandy's* case.

Be that as it may *Chandy's* case is not in applicant's favour. The relevant portion, paragraph 6 at page 644 reads:

"It has been held that initiation in good faith of a departmental enquiry under the Customs Act by the Customs authorities on the basis of facts which are the subject of a criminal prosecution under the Act against the appellant would not amount to contempt as the authorities are acting *bona fide* and discharging their statutory duties (*Tuka Ram G. Gaokar* v. *R.N. Shukla* A.I.R. 1968 S.C. 1050, see also *Jang Bahadur Singh* v. *Baij Nath Tewari* A.I.R. 1969 S.C. 30). In another case it was held that the issue of a notification under the Abolition of Jagirs Act for resumption of Jagirs during pendency of a Jagindar's writ petition for restraining such resumption is not contempt because the government was acting *bona fide* in the exercise of its statutory rights (see *Malojirao Shitok* v. *C.G. Matkar* A.I.R. 1953 Madya Pradesh B. 245). These cases establish that *bona fide* exercise of a statutory right by a party to a proceeding is not contempt in the absence of an interim injunction against or undertaking by that party."

For the respondents the learned Attorney submitted that the disciplinary proceedings had been instituted in good faith in exercise of statutory functions. The Education Service Commission he continued was constituted under Article 141A of the constitution and its function spelt out in Article 144(1), and that includes the exercise of disciplinary control over members of the education service. The regulations governing conditions of service, including discipline are contained in the General Orders, made under Article 132 and during the Emergency, the appropriate Emergency Ordinance and therefore have the force of law. Unlike the Indian Services Commissions which are merely advisory (see *Basu's* Commentary on the Constitution of India 5th Edition page 345 on the Indian Article 320(3)), our Education Service Commission has substantive powers. There was no injunction in this case, no order to stay proceedings nor is there any existing practice to stay proceedings pending result of a civil suit of the sort mentioned here.

The learned Attorney went on to say that respondents, members of the commission would be failing in their duties had they not proceeded with what they honestly believe to be their constitutional function and they had suspended all further action as soon as they heard of the present application. The disciplinary action he added cannot be contempt for otherwise the constitutional procedure in Articles 141 and 144 would be nugatory, discipline will not be enforceable and teachers can delay transfers by filing suits in court against their transfer orders.

On the facts it was submitted that the show cause letters were not published to the world at large. One copy was sent to the applicant and three other copies

to three different officials. I was referred to the decision in *Vine Products Ltd. & Ors.* v. *Green & Anor.*[5] where it was held that while it was contempt of court for a newspaper to comment on pending legal proceedings in any way which was likely to prejudice their fair trial, not every publication which happens to amount to or be equivalent to a discussion of the rights of some party's case in legal proceedings is automatically contempt of court, even a technical one and that the jurisdiction should be invoked only when there was a real and grave risk of interference with the proper administration of justice. I would with respect agree that on the score of the restricted scope of publication alone there cannot be contempt for by no stretch of the imagination can such publication pose any sort of risk of interference with the proper administration of justice. What was called by applicant's counsel publication was in fact intimation to the applicant of charges of a departmental character proposed to be brought against him.

Another Supreme Court decision, *Jang Bahadur Singh* v. *Baij Nath Jiwari*[6] also alluded to earlier appears to be even more in point. There the court held an enquiry by a domestic tribunal in exercise of statutory powers vested in it (in the case, under Article U.P. Intermediate Act (2 of 1981) and the Regulations framed under it) into charges of misconduct against an employee does not amount to contempt of court merely because an enquiry into the same charges is pending before a civil or criminal court. The court went on to say that the initiation and continuation of disciplinary proceedings in good faith do not obstruct or interfere with the cause of justice in the pending court proceeding.

This principle is re-affirmed in *M/s. Security and Finance* v. *Dattatraya.*[7]

All the charges against applicant are for alleged disciplinary offences under the Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations, 1969 made under the Emergency (Essential laws) Ordinance No. 1 of 1969 and are therefore not mere executive instructions. They form part of the conditions of service of government officers such as the applicant, so that the decision in *Pratap Singh* v. *Gurbaksh Singh*[8] which would otherwise be in applicant's favour, can be distinguished. There the majority decision was made on the footing that the circular letter which made it a disciplinary offence for a government officer to have recourse to a court of law before exhausting the normal official channels of redress were only executive instructions and did not embody a rule governing conditions of service. On that footing only the court by a majority had held that the action by government in starting departmental proceedings amounted to contempt.

Regulation 21(1) of the Public Officers Regulations (Behaviour and Discipline) (General Orders Chapter D) 1969 reads:

"No steps may be taken by any officer to institute legal proceedings in his own personal interest in connection with matters arising out of his public duties without the prior consent of the Government."

Incidentally Mr. Karpal Singh thinks that the prior consent is only required when the officer wishes to proceed against a third party and not against the employer, the government, so that instituting legal proceedings against the latter would not make him liable to disciplinary measures.

With respect I am unable to agree. The wording is wide enough to include proceedings against the Government and if, as if it is reasonable to expect, consent is not likely to be obtained readily, one should not forget that the Government employee must be deemed on accepting employment to have given up unrestricted liberty to have recourse to the courts. We should bear in mind that Chapter D (including Regulation 21) made by the Director of Operations under power given to him under the Emergency (Essential Powers) Ordinance, 1959, are not mere instructions issued by the executive but has the force of law and government employees must be deemed to have accepted such restructions on joining government employment. Even if charge (vi) is regarded as improper to bring against the applicant at this juncture, and I would hold it is not, the cautionary words in another Indian Supreme Court decision, *Rizwan-Ul-Hasan* v. *State of Uttar Pradesh*[9] at page 187, which is set out below, should not go unheeded:

"As observed by Rankin C.J. in *Anantalal Singh* v. *Alfred Henry Watson* A.I.R. 1931 Cal. 257 at page 261 the jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with the due course of justice and that the purpose of the courts' action is a practical purpose and it is reasonably clear on the authorities that the court will not exercise its jurisdiction upon a mere question of propriety."

To sum up, such publication as there was of the disciplinary proceedings intended was the bare minimum necessary for the Commission to exercise its constitutional functions, and cannot in my view be regarded as an attempt to interfere with the ordinary course of justice nor would the initiating of proceedings in the *bona fide* discharge of duties enjoined upon the commission by the Constitution be regarded, in the light of the authorities I have referred to, as contempt, and lastly charge (vi), cannot be viewed as an attempt to dissuade the applicant from recourse to the court but is merely the enforcement of a condition of service which he must be deemed to have accepted.

Examined in the light of Lord Diplock's definition of contempt of court cited earlier, the conduct of the Education Service Commission in relation to the civil suit applicant has filed neither tends to undermine the system for the administration of justice by courts of law and the maintenance of public confidence in it nor does it inhibit citizens from availing themselves of that system for the settlement of their disputes.

I would therefore dismiss the application with costs.

The applicant appealed to the Federal Court.

FEDERAL COURT.

Karpal Singh for the appellant.

Lim Beng Choon (Senior Federal Counsel) for the respondents.

Cur. Adv. Vult.

Raja Azlan Shah Ag. L.P. (delivering the judgment of the Court): The appellant is a teacher at Sekolah Rendah Jenis Kebangsaan (China) Naam Kheung, Batu 3½, Jalan Cheras, Kuala Lumpur. He was ordered to go on transfer to Sekolah Rendah Jenis Kebangsaan (China) Chung Hwa, Jerteh, Trengganu, *vide* Selangor Education Department letter dated January 12, 1980. He refused to comply with the transfer order. He appealed to the education authority to cancel the said order but was not successful. On April 11, 1980 the Secretary-General of the Ministry of Education directed him to present himself to the Headmaster of the school in Jerteh as early as possible. He again refused to do so. In the meanwhile, on April 14, 1980 he filed a suit in the High Court, Kuala Lumpur asking for a number of declarations, the main one being the declaration that the purported transfer was void and of no effect. While the suit was still pending the Education Service Commission on June 9, 1980 sent a notice to him to show cause why he should not be dismissed from the teaching service. The notice also carried several charges against him relating to acts purportedly in violation of several provisions of the Public Officer (Behaviour and Discipline) Regulations otherwise known as General Orders Cap. D. The several charges against the appellant concerned primarily with the non-compliance of the transfer order and the subsequent conduct and acts of the appellant. On September 29, 1980 the appellant applied to the High Court under Order 52(3) of the Rules of the High Court, 1980 to commit the respondents for alleged contempt of court. The grounds for the application for committal are set out in the statement which can be summarised briefly as follows: —

(1) Knowing that there was a pending suit in the High Court for declarations on the purported order for transfer the respondents had by sending the notice to show cause dated June 9, 1980 prejudged the issues which were in fact the subject matter of the suit then pending;

(2) The action of the respondents clearly interfered with the true course of justice and the lawful process of court;

(3) The action of the respondents were clearly calculated to hinder the court in the administration of justice adversely affecting the authority and dignity of the court; and

(4) The action of the respondents clearly prejudiced the merits of the applicant's case pending before the court.

Wan Suleiman F.J. who heard the application held:

"that on the score of the restricted scope of publication alone there cannot be contempt for by no stretch of the imagination can such publication pose any sort of risk of interference with the proper administration of justice. What was called by applicant's counsel publication was in fact intimation to the applicant of charges of a departmental character proposed to be brought against him."

And in another passage of his judgment he said:

"Examined in the light of Lord Diplock's definition of contempt of court cited earlier (i.e. *Attorney-General* v. *Times Newspapers Ltd.*[1]) the conduct of the Education Service Commission in relation to the civil suit applicant has filed neither tends to undermine the system for the administration of justice by courts of law and the maintenance of public confidence in it nor does it inhibit citizens from availing themselves of that system for the settlement of their disputes."

Before we consider the statements carried in the show cause notice and the nature of those statements, we would briefly deal with the functions of the Education Service Commission. The Education Service is one of the public services enumerated in Article 132 of the Federal Constitution. It is a body established under Article 141A of the Constitution whose jurisdiction extends to all persons who are members of the education service. The functions of a service commission are set out in Article 144 of the Constitution. It is clearly expressed in clause (1) of the Article that one of the constitutional functions of a Service Commission is to exercise disciplinary control over members of the service to which its jurisdiction extends.

The letter dated June 9, 1980 had as its heading the words "Disciplinary Action". The Education Service Commission indicated to the appellant that it had received certain reports and that after considering those reports had proposed to take disciplinary action under General Orders Cap. D. The rest of the letter dealt with the purported contravention of "several disciplinary regulations" and also carried six charges against the appellant. The first charge alleged that the appellant as a Government Officer had been ordered to be transferred but had not complied with the order and thereby acted in a manner "which could be construed as pushing off public responsibility because of personal interests", and acted in a matter "which could be construed as defiance of the order." The second charge alleged that the appellant not having complied with the order to present himself at the school in Jerteh, Trengganu, had acted "in an irresponsible manner." The third charge dealt with the appellant failing to report for work without leave or permission since February 1, 1980 thereby "acting in an irresponsible manner". The fourth and fifth charges dealt with the allegations that the appellant brought or tried to bring "outside influence or pressure" through a newspaper to have the transfer order cancelled and also making several public statements in local newspapers which tarnished the good name of the Government, thereby "contravening certain provisions of regulation 3(1) of the General Orders Cap. D." The sixth charge was in respect of the appellant having taken legal action in Civil Suit No. 72 of 1980 which was then pending without the prior approval of the Government thereby also "contravening certain provisions of regulation 3(1) of General Orders Cap. D."

The category of contempt we are concerned with is so well-known and reasonably well-established. Its object is to uphold the due administration of justice and in particular to protect the right to a fair and proper trial. According to Lord Diplock in *Attorney-General* v. *Times Newspapers Ltd.* (*supra* at page 72) the due administration of justice requires: (1) that all citizens should have unhindered access to the courts; (2) they should be able to rely on obtaining in the courts the arbitrament of a tribunal which is free from bias and whose decision is based on all the available evidence properly admitted; (3) once a dispute has been submitted to the court, they should be

able to rely on there being no usurpation by any person of the function of that court to decide it according to law. Conduct calculated to impair any one of the three requirements may be prosecuted for contempt.

On behalf of the appellant it was argued that the conduct of the Education Service Commission in the 'publication' of the show cause notice is tantamount to 'usurpation by the Commission of the function of the court to decide the pending legal proceedings according to law'. Here lies the central issue raised in the present appeal. If it appears that the conduct, i.e. publication of the show cause notice, may influence or appear to influence the decision of that court or may affect the minds of witnesses, then it is objectionable. This category of contempt is based squarely on conduct which prejudges any issue pending before the court. Lord Diplock in the *Times Newspapers* case puts the matter in its proper perspective. He seemed to consider such prejudgments a contempt on the basis that it would "inhibit suitors generally from availing themselves of their constitutional right to have their legal rights and obligations ascertained and enforced in courts of law" (see page 71). It seems clear according to this category of contempt prejudgment of a pending case should not be published — it is absolutely prohibited. By prejudgment is meant, of course, a publication which takes up a stand as to which party in a given case is right or wrong either *in toto* or on a particular issue of the case. In the *Times Newspapers* case the article which it proposed to publish set out, apparently in some detail, evidence and argument intended to show that Distillers were negligent in the manufacture of thalidomide, an issue which, of course, lay at the heart of the dispute. Their Lordships were agreed that the publication should be restrained on the basis that it amounted to a prejudgment of the case.

We feel that the real question for the court in this case to decide whether there is contempt, is whether the risk of prejudice to a fair and proper trial of the pending legal proceedings is serious or real or substantial. That is an application of the ordinary *de minimis non curat lex* principle — the law does not concern itself with trifles. Intent alone is insufficient to establish contempt (see *R.* v. *Ingrams & Ors., Ex parte Goldsmith*[10]).

We are satisfied that the notice to show cause was merely a first step taken in the conduct of the proposed disciplinary proceeding against the appellant by the Education Service Commission in the proper exercise of its constitutional duties. The Commission had voluntarily desisted in the disciplinary proceeding in deference to the pending proceedings; accordingly there has been no discussion whatsoever on the facts pertaining to the charges carried in the show cause notice nor on the merits of the case for or against the appellant. We feel that the appellant had acted prematurely when he applied to the High Court on September 29, 1980 under Order 32(3) of the Rules of the High Court, 1980 to commit the respondents for contempt.

We cannot therefore see that the fair and proper trial of the issues in the pending action would be in any way hampered or adversely affected by the 'show cause notice'. The trial is to be by a judge alone; it is proper to assume he will not be improperly influenced in any way. Prospective or potential witnesses would not be deterred or discouraged from contributing their testimony, for there is no reason to suppose that the substance of their evidence or their readiness to contribute will be affected or in any way impaired. Such witnesses are either credible and reliable or they are not. Our adversary system of justice in which evidence is elicited by examination and cross-examination provides the means of demonstrating the character and quality of the witnesses. We are accordingly left with no impression of lurking danger of the kind we have mentioned.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Karpal Singh & Co.*

NORTH BORNEO TRADING CO. (B) SDN. BHD. v. HENRY WONG TAN FOOK

[F.C. (Lee Hun Hoe C.J. (Borneo), Syed Othman & Abdul Hamid F.JJ.) October 13 & November 6, 1981]

[Kuching — Federal Court Civil Appeal No. 66 of 1981]

Bankruptcy — Service of bankruptcy notice — Order for substituted service of bankruptcy notice — Publication in newspaper and Government Gazette — Publication in prescribed form — Bankruptcy notice itself not published — Bankruptcy Rules, 1969, rr. 97, 110 & Form 15 — Bankruptcy Act, 1967, s. 131.

In this case a bankruptcy notice could not be served personally on the respondent and the appellants obtained an order for substituted service, which stated that the bankruptcy notice shall be published in a newspaper and in the Government Gazette. The notice published was in the form prescribed by the Bankruptcy Rules, but the actual bankruptcy notice was not published. The respondent contended that the service was irregular as the actual bankruptcy notice was not published. The learned Judge set aside the service as he held it was not in compliance with the order. The appellants appealed.

Held: (1) in this case the publication was made to conform with the form prescribed by the Bankruptcy Rules and as in the circumstances the publication brought the bankruptcy notice to the knowledge of the debtor, there was no irregularity;

(2) the bankruptcy notice was duly served on the debtor in this case.

Cases referred to:-

(1) *Porter* v. *Freudenberg* [1915] 1 K.B. 857, 889.

(2) *Kamaruddin bin Mohamed* v. *United Motor Works (M) Sdn. Bhd.* [1982] 1 M.L.J. 126.

FEDERAL COURT.

S. Sahathevan for the appellant.

T.O. Thomas for the respondent.

Cur. Adv. Vult.

Abdul Hamid F.J. (delivering the judgment of the Court): This appeal is against the decision of George K.S. Seah J. who allowed the Bankruptcy Notice served by substituted service to be set aside on the ground that it was not in compliance with the order.

A judgment for the sum of $3,760 with interest